

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAMON CHARLES WILLIAMS,

CASE NO. C18-48RSM

Plaintiff,

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

V.

PRK FUNDING SERVICES, INC., *et al.*,

Defendants.

I. INTRODUCTION

This matter is before the Court on the Motion for Summary Judgment by Defendants Daniel Jensen, Ricci Frisk and Donald Capp. Dkt. #166.¹ The Court has previously dismissed or granted summary judgment in favor of 26 of the 29 defendants that Plaintiff sued for their involvement with the foreclosure of a property he previously owned. The remaining Defendants—Defendant Jensen, Defendant Frisk, and Defendant Capp—are all employees of the State of Washington. Plaintiff alleges that Defendants deprived him of due process because they

¹ Prior to the Court entering this Order, Plaintiff filed a “Notice of Fiduciary Nomination.” Dkt. #169. Referencing a provision of the estate tax code—26 U.S.C. § 2041—Plaintiff purports to nominate the undersigned as “Fiduciary Trustee of the Damon Charles Williams Estate.” *Id.* at 2–3. As the Court otherwise grants summary judgment herein, terminating this case, the Court denies Plaintiff’s Notice as moot.

1 informed him that his requests for state administrative review failed. Defendants argue that
2 Plaintiff's claims fail precisely because, as they informed him at the time, he did not have a right
3 to administrative review. Plaintiff does not oppose the Motion. For the following reasons, the
4 Court grants the Motion.

5 **II. BACKGROUND**

6 This case centers around a property that Plaintiff owned before transferring 100% of his
7 ownership to a Limited Liability Company he had an interest in, the "Williams Family Holdings
8 LLC," on August 3, 2005. Dkt. #123-1 at 2. The LLC obtained a loan secured by the property
9 but fell behind on payments. Dkt. #111 at 2–13, 17–33; Dkt. #3 at ¶ 34. Plaintiff attempted to
10 prevent foreclosure by personally filing for bankruptcy, but the foreclosure of the property
11 proceeded. Dkt. #111 at 15, 37–39. As a part of the foreclosure, and on September 22, 2009, a
12 Real Estate Excise Tax Affidavit ("REET Affidavit") was filed on a Washington State
13 Department of Revenue ("DOR") form. Dkt. #168-1 at 11–12.

14 Despite the foreclosure occurring in 2009, Plaintiff began pursuing the claims of this
15 action in November of 2017. Dkt. #167 at ¶ 2; Dkt. #168 at ¶ 2. To that end, Plaintiff contacted
16 the DOR, asserting that the REET Affidavit was filed in violation of an automatic bankruptcy
17 stay and requesting that DOR review and take corrective action. Dkt. #168-1 at 2–13. Defendant
18 Jensen, a DOR employee, responded with two letters indicating generally that DOR could only
19 review actions taken by DOR. Dkt. #168-1 at 15. Because DOR had not taken any action related
20 to the REET Affidavit filing, DOR denied Plaintiff's request for review or corrective action. *Id.*

21 Concurrently, Plaintiff contacted the Washington State Office of Administrative Hearings
22 ("OAH"). Dkt. #167 at ¶ 2. Plaintiff requested an administrative hearing and any forms
23 necessary for initiating one. Dkt. #167-1 at 2–3. In response, and following several other
24 communications, Defendant Capp sent Plaintiff a letter. Dkt. #167-1 at 5. The letter

1 memorialized telephone conversations between Defendant Frisk and Plaintiff and explained that
2 OAH did not hold hearings related to actions taken by the City of Seattle or its police department
3 and that administrative hearings were initiated with the agency that had acted. *Id.*

4 Plaintiff later commenced this action, alleging that Defendants had denied him
5 administrative review, due process, and “honest service.” Dkt. #3 at ¶¶ 224–27, 238–40.

6 **III. DISCUSSION**

7 **A. Legal Standard**

8 Summary judgment is appropriate where “the movant shows that there is no genuine
9 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED.
10 R. CIV. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
11 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
12 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
13 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*
14 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*,
15 969 F.2d 744, 747 (9th Cir. 1992)).

16 On a motion for summary judgment, the court views the evidence and draws inferences
17 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*
18 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). However, the non-moving party must
19 present significant and probative evidence to support its claim or defense. *Intel Corp. v. Hartford*
20 *Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). “The mere existence of a scintilla
21 of evidence in support of the [non-moving party’s] position will be insufficient; there must be
22 evidence on which the jury could reasonably find for the [non-moving party].” *Anderson*, 477
23 U.S. at 251. Uncorroborated allegations and self-serving testimony will not create a genuine
24 issue of material fact. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002);

1 *T.W. Elec. Serv. v. Pac. Elec. Contractors Ass'n*, 809 F. 2d 626, 630 (9th Cir. 1987). Rather, the
2 non-moving party must make a "sufficient showing on [each] essential element of her case with
3 respect to which she has the burden of proof" to survive summary judgment. *Celotex Corp. v.*
4 *Catrett*, 477 U.S. 317, 323 (1986).

5 Where a plaintiff fails to respond to a motion for summary judgment, the court may not
6 grant the motion as a matter of course. *Heinemann v. Satterberg*, 731 F.3d 914, 916 (9th Cir.
7 2013) ("[A] motion for summary judgment may not be granted based on a failure to file an
8 opposition to the motion."); *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 950 (9th Cir. 1993). "Rule
9 56 requires district courts to assess whether 'the motion and supporting materials' entitle the
10 movant to summary judgment." *Heinemann*, 731 F.3d at 916 (quoting Fed. R. Civ. P. 56(e)(3)).
11 However, "the opposing party's failure to respond to a fact asserted in the motion permits a court
12 to 'consider the fact undisputed for purposes of the motion.'" *Id.* (quoting Fed. R. Civ. P.
13 56(e)(2)).

14 **B. Summary Judgment Is Appropriate**

15 Plaintiff's claims suffer from a multitude of issues, including those identified by
16 Defendants. Dkt. #166. As an initial matter, Plaintiff does not appear to have standing.

17 In order to have standing to bring his due process claim, petitioner must have
18 suffered actual injury as a result of [the actions of] which he complains. *See Lujan*
19 *v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Lewis v. Casey*, 518
U.S. 343, 351 (1996) (holding that prisoners did not have standing to bring claims
that the insufficiency of the prison library violated their constitutional rights
unless they showed that this actually hindered their efforts to pursue legal claims).
20
21 *Beqir v. Clark*, No. C05-1587-RSM-JPD, 2006 WL 1587483, at *1 (W.D. Wash. June 6, 2006),
22 *aff'd*, 220 F. App'x 469 (9th Cir. 2007). Plaintiff's attempts at administrative review were
23 premised on his belief that such review would unwind the foreclosure—the relief he sought in
24 this action. But the Court has already concluded that Plaintiff's rights were not impacted by the

1 foreclosure. Dkts. #107 and #159. Accordingly, Plaintiff did not suffer any actual injury by his
2 perceived delay or lack of administrative review of the foreclosure.

3 Additionally, the Court agrees with Defendants that Plaintiff lacked standing to initiate
4 review of the 2009 REET Affidavit. As Defendants note, the Court has already found that
5 Plaintiff had no personal interest in the property at the relevant times. Dkt. #166 at 3 (quoting
6 Dkt. #159 at 3, 7–8). Plaintiff therefore lacked any personal interest in any property-related
7 actions taken by the State, its agencies, or its employees at the relevant times. *See* Dkt. #166 at
8 6. Plaintiff has not pointed to any legal authority providing that he had standing to trigger review
9 of any actions related to the 2009 REET Affidavit.

10 Still further, the State could not review actions related to the 2009 REET Affidavit
11 because Plaintiff could not establish that the State, its agencies, or its employees took actions
12 related to the 2009 REET Affidavit. From the limited record, no tax proceeds flowed to the State
13 and that its involvement with the 2009 REET Affidavit was limited to creating the form itself.
14 Review was not possible because Plaintiff did not point to any evidence of state action related to
15 the 2009 REET Affidavit. Dkt. #166 at 7–8 (noting that DOR administrative review is limited
16 to “correction of taxes, interest or penalties” pursuant to WAC 458-20-100(1)); *Id.* at 8 (noting
17 that OAH conducts hearings related to agency actions).

18 Lastly, and for these reasons, Plaintiff cannot establish a 42 U.S.C. § 1983 claim based
19 upon procedural due process violations. Such a claim requires: (1) a liberty or property interest
20 protected by the Constitution; (2) a deprivation of the interest by the government; and (3) lack of
21 process. *Portman v. County of Santa Clara*, 995 F.2d 898 (9th Cir. 1993). Plaintiff did not have
22 an interest in the property, did not have standing to trigger review of the 2009 REET Affidavit,
23 and the State could not review actions related to the 2009 REET Affidavit. Plaintiff does not
24 establish that he was deprived of any liberty or property interest.

1 For these and the reasons identified by Defendants, with which the Court agrees,
2 summary judgment is appropriate.

3 **IV. CONCLUSION**

4 Having reviewed the motions and the relevant briefing and the remainder of the record,
5 the Court hereby finds and ORDERS:

- 6 1. The Motion for Summary Judgment by Defendants Daniel Jensen, Ricci Frisk and
7 Donald Capp (Dkt. #166) is GRANTED and all of Plaintiff's claims against
8 Defendants Daniel Jensen, Ricci Frisk, and Donald Capp are DISMISSED with
9 prejudice.
- 10 2. Plaintiff's Notice of Fiduciary Nomination (Dkt. #169) is DENIED as moot.
- 11 3. Because there are no remaining defendants, this matter is now CLOSED.

12 DATED this 5 day of August, 2019.

13 
14 RICARDO S. MARTINEZ
15 CHIEF UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24